IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5157 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PIDUGU MANOHAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5157 of 2004

MR AR GUPTA for Petitioner No. 1

MR SS PATEL, APP for Respondent No. 1

DS AFF.NOT FILED (N) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 23/09/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. AR Gupta for the

applicant accused and ld. APP Mr. SS Patel for the State. Mr. Prashant P Shah, Law Officer of respondent No.2 complainant company is present in person before the Court.

2. Rule. Ld. APP Mr. SS Patel appears and waives service of Rule for respondent No.1 State and Mr. Prashant P.Shah, Law Officer of respondent No.2 complainant company who is present in the Court today waives service of Rule on behalf of respondent No.2 complainant company. On consent, Rule is fixed forthwith.

3. By way of reply affidavit filed by the Law Officer of respondent No.2 complainant company which is taken on record, respondent no.2 company has confirmed that the parties have settled the dispute out of Court. Not only that, the said affidavit also reveals that defective machines have been returned back to the applicant company and respondent no.2 complainant company had received entire amount of consideration back and complainant is not interested in prosecuting the matter any further.

4. Having considered the nature of allegations in the complaint, even for the sake of arguments the case of the prosecution is accepted as it is, it would be difficult for this Court to accept that there is an element of breach of trust. So otherwise also, the prosecution under Sec.406 of IPC could not have succeeded. So, the complaint qua the offence punishable under Sec.406 of IPC is concerned, the same otherwise could have been quashed and, therefore, without entering into the merits of the matter and in view of the fact that the parties have settled the matter out of court, the complaint/chargesheet qua the offence punishable under Sec.406 of IPC is hereby quashed and set aside.

5. So far as the offence punishable under Sec.420 of IPC is concerned, it is otherwise should have been compounded with the permission of the trial Court as the same falls in Part-II of Sec.320 of CrPC. The parties could have been relegated by this Court to the trial Court so that they can place the settlement and pray for appropriate relief. But when the responsible officer of respondent no.2 complainant company who is present in the Court confirms the settlement/agreement arrived at between the parties, copy of which has been produced by the present applicant, the appropriate orders by accepting the settlement can be passed by this Court so that further proceedings and complexity can be avoided.

So, In view of above, the Court accepts the settlement arrived at between the parties as compromise between them and oral request extended by both the parties to permit them to settle the matter is also accepted.

6. In view of terms of settlement arrived at between the parties, settlement is accepted and the applicant accused is hereby ordered to be acquitted for the offence punishable under Sec.420 of IPC. So, it is not necessary to pass any formal order of quashing the complaint/ chargesheet so far as offence punishable under Sec.420 of IPC.

7. For the reasons aforesaid, the complaint/ chargesheet for the offence punishable under Sec.406 of IPC against the applicant accused is hereby quashed and set aside and so far as offence punishable under Sec.420 of IPC is concerned, the applicant accused is hereby acquitted. Bail Bonds, if any, stand discharged. Consequently, the Criminal Case No.3906/2004 pending before the ld. JMFC, Court No.3, Ahmedabad (Rural) is also hereby quashed and set aside.

8. Rule is made absolute accordingly. Yadi to the concerned court. Direct Service is permitted.

[C.K. BUCH, J]
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